

REMARKS

Claims 1 and 5-55 are pending in this application. In the non-Final Office Action mailed November 27, 2007, claims 1 and 5-55 were rejected. Reconsideration of the present application is respectfully requested.

Claims 1 and 5-55 were rejected for obviousness-type double patenting in view of claims 1-13 and 24-40 of copending Application No. 11/112,586. It is noted that certain claims in the '586 application were rejected for obviousness-type double patenting in view of the pending claims in this application. A terminal disclaimer directed to this application has been submitted and approved in the '586 application. However, the '586 application is still pending. Since the obviousness-type double patenting rejection in this application is provisional and a terminal disclaimer has already been submitted in the '586 application, Applicants have not submitted a terminal disclaimer in this application.

Claim 1 and 5-55 also were rejected under 35 USC §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0225295 to Zubok et al. Zubok et al. was filed on February 20, 2004 and the present application was filed on January 26, 2004. Accordingly, Zubok et al. is not potentially prior art under 35 USC §102(e) unless the subject matter disclosed therein and used to reject the claims is also disclosed in an application to which Zubok et al. claim priority having a filing date prior to January 26, 2004. A review of each of the applications to which Zubok et al. claim priority does not reveal any disclosure of distractor 500 in Figures 7-9. Enclosed herewith is a Supplemental Information Disclosure Statement that includes each of the publications or patents, among other references, corresponding to the applications to which Zubok et al. claim priority. Since at least distractor 5000 with its housing 5200 and guide members 5100 are not prior art to the present application, withdrawal of the rejection of claims 1 and 5-55 is respectfully requested.

The present application is believed to be in condition for allowance. Reconsideration and allowance of the present application including claims 1 and 5-55 is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

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